

Tulane Environmental Law News

A Publication of the Tulane Environmental Law Society & the Tulane Institute for Environmental Law and Policy

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Perspectives on the New EPA Title VI Guidance:

Opinions from a practicing attorney, a corporate representative, a professor, and an environmental activist.

"Throw it out. That is my simple advice to EPA on its new Title VI Guidance. With this new assault on Title VI, the Clinton EPA has joined conservative federal courts and right-wing activists in trying to eviscerate civil rights protections for people of color. . . Only a fresh approach, unburdened by fealty to 'stakeholders' hostile to civil rights, can resuscitate EPA's dormant civil rights enforcement." -Luke Cole

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"The business community is committed to working with EPA, states and host communities to resolve environmental justice concerns. It is our hope that eventually, the revised draft guidance will reflect our concerns, and lead to a fair and workable system."

-Keith McCoy

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"The draft guidance can be described in two words-'total disaster.' The Interim National Black Economic and Environmental Justice Coordinating Committee, a network of over 300 black organizations, says the draft guidance fails to recognize that the concentration of waste sites and toxic facilities in communities of color is a form of racial discrimination that violates the civil rights of people of color who live in these communities."

-Robert Bullard

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"On its face, the concentration of polluting industries in communities of color due to discriminatory siting decisions should constitute a violation of civil rights law. But according to the Environmental Protection Agency, that is not the case. Recent rules promulgated by the EPA's Office of Civil Rights significantly weaken environmental protections. . . ." -Damu Smith

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Recent Studies Question the Independence of the Judiciary and its Approach to Environmental Law

Two recent studies, in which both Tulane and the State of Louisiana played important roles, have surfaced disturbing facts on the extent of corporate influence over judicial decision-making. Equally disturbing is the heavy weight of this influence on environmental issues and environmental law. At

issue is the independence and, in a fundamental sense, the fairness, of judicial review in a system of justice that depends on judicial review for the fulfillment of law.

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Taking On the Corps

"President Truman ... was strong enough to fire General Douglas MacArthur but, so far, the Army Engineers have successfully defied him. ... No more lawless or irresponsible Federal group than the Corps of Army Engineers has ever attempted to operate in the United States, either outside of or within the law."

United States Secretary of the Interior
Harold L. Ickes, 1951

Strong words, but hardly unique. The U.S. Army Corps of Engineers has been surrounded by controversy for nearly two centuries, and the

issues have scarcely changed. As early as 1836, the House Ways and Means Committee found 25 "useless" and "fallacious" Corps construction budgets, schemes that, as reported by one investigator, "exceeded army estimates by up to 300 percent." One hundred and sixty four years later, two series of investigations reported recently in *The Washington Post* spell out the same findings. These articles add new chapters to old stories of phantom benefits, ignored costs and the sacrifice of fiscal and environmental values -- indeed, of professional integrity - on a massive scale.

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TELS Is Looking For a Few Volunteers

The Tulane Environmental Law Society (TELS) is sounding out the interest of its members and alumnae in participating in next year's Eco Challenge Expedition Race. This year's competition, reported from Borneo (*The Times Picayune*, Sept. 15) involved 155 Americans, at least 30 of whom have, according to the Center for Disease Control, since come down with a bacterial infection, leptospirosis. Many have been hospitalized. In the 12-day event, racers sailed, mountain biked and "slogged through torrential jungle rain and mud while being assaulted by voracious leeches." Following which they swam and canoed in a

"storm-swollen river," and then "waded through caves filled with bat guano." The TELS is confident that veterans of TELS canoe and bike trips will be ready for the Eco Challenge, and looks forward to your expressions of interest.



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**And Thank You to All Who
Contributed to This Issue**

What ELS Is Up To

The Tulane Environmental Law Society has launched the academic year with a full round of speakers, outings, community activities and of course the Environmental Law Conference.

At a recent Brown Bag Lunch, the Chief of the Wildlife Section of the U.S. Department of Justice's Environment and Natural Resources Division, Jean Williams, a Tulane graduate discussed the challenges in representing the government on the rising wave of Endangered Species Act litigation. She also gave pointers on employment with federal agencies. In another session Dr. Barry Kohl, a Tulane scientist, spoke of the extent of Mercury contamination in Louisiana and its sources, giving rise to a discussion of legal remedies.

Our weekend outings have provided

the usual break from the week-at-the-books, and visual, hands-on reminders of the environment we are working to preserve. Professor Houck broke us in quickly with a thirty-mile bike trip around New Orleans the first weekend of the semester. After a quick recovery, we were back outside with a canoe trip down Black Creek in Mississippi. Two weekends later, we headed up to Alligator Bayou for a swamp tour and an afternoon of Cajun food and music. In the works are several voluntary community service details: building trails in the Bayou Sauvage National Wildlife Refuge, Christmas-in-October rehabilitation projects in the central city, and, further along, the Christmas tree collection and marsh restoration projects for the Louisiana coastal zone.



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SIXTH ANNUAL ENVIRONMENTAL LAW CONFERENCE

Babbitt and Grunwald Invited

Tulane Law School's sixth annual day-and-a-half Environmental Law, Science and Public Policy Conference is scheduled for March 9-10, 2001.

Secretary of the Interior Bruce Babbitt has been invited as keynote speaker. Mike Grunwald, who recently authored a series of articles in *The Washington Post* on the Corps of Engineers, has also been invited as a plenary speaker.

Building on the experience of the last five years—with more than 500 people attending the 24 panels, eight field trips and a keynote banquet—organizers hope to make this year's gathering even larger and more varied. The conference brings together a unique mix of lawyers, scientists, students, business people, and government officials who normally do not otherwise find many opportunities for joint reflection on such a smorgasbord of issues.

Continuing our tradition of "covering the waterfront," this year's conference

committee is planning panels on a broad range of topics: state water policy, the decommissioning of dams, children's health, forestry, critters, urban sprawl, air policy, litigation strategies, and much more. It will also offer parallel sessions for legal skills and for issues of regional and national scope. Field trips into the local environment will continue to be a highlight, as will evenings of local food and music in support of relaxed networking. Last but not least, we hope to host a reunion of Tulane environmental law alumnae in the state and the Gulf Coast region.

The conference is a project of the Environmental Law Society, with the support of the Institute for Environmental Law and Policy. Conference brochures and registration information will be mailed in January. Those interested in further information can contact Jerry Speir at jspeir@law.tulane.edu

INSTITUTE ADDS LATIN AMERICAN EXPERTISE



The Institute for Environmental Law and Policy is pleased to announce the addition of two new staff members who will assist in expanding the Institute's Latin American programs.

Dr. Jorge Varela, who will serve as Director of Latin American Projects for the Institute, comes with a background of extensive involvement in environmental law and policy projects throughout Latin America and Africa. In previous positions with the Organization of American States, the United Nations Environment Program, and with private consulting organizations, Dr. Varela has worked in Argentina, Bolivia, Brazil, Chile, El Salvador, Mexico, Nicaragua, Paraguay, Peru, Uruguay, Venezuela, Tanzania, Kenya, and Angola. He holds an M.A. and LL.B. from Pontificia Universidad Católica de Chile in Santiago, a Masters of International Legal Studies from American University's Washington College of Law, and he completed his doctoral studies at George Washington University's National Law Center.

Dr. Varela's experience has ranged from detailed involvement with individual countries' implementation of the Convention on International Trade in Endangered Species to broad advice on the modernization and restructuring of nations' environmental regulatory schemes.

Institute Director Jerry Speir notes: "Jorge is a unique individual with a rare combination of experience who will be an invaluable resource as we expand our Latin American programs."

The Institute is also pleased to announce the addition of Kem

Opperman-Torres as a new Program Coordinator. Ms. Opperman-Torres holds a master's degree in Spanish Education, has lived and taught in Nicaragua for two years,

and brings important experience in organizing and managing programs. "Kem will both support our Latin American efforts and provide important day-to-day office management for our various Institute activities," Speir said.



This summer I received a grant to do a legal internship with the National Wildlife Federation (NWF) in Boulder, CO. The NWF Boulder office works primarily on grassland issues, so my first major project involved litigation over how the Forest Service is managing cattle grazing permits. I also did an analysis of legislation proposed by Colorado Senator Wayne Allard that would turn a nuclear weapons facility (Rocky Flats) into a National Wildlife Refuge. This project included a trip to the proposed site where I was able to see not only the nuclear weapons facility, but also a handful of endangered species and several very unique riparian areas. My final and favorite project involved research pertaining to the Endangered Species Act and critical habitat issues surrounding the black-footed ferret and black-tailed prairie dog. This project included another field trip to the Pawnee National Grasslands in northeastern Colorado. I am grateful for my experiences this summer... encountering some of the things I learned about in my environmental law classes, and I have many fond memories to boot!

-Brennan Curry ('02)

EIS, NEPA, TMDL, ACOE. My first days this summer at the Kentucky Resource Council were a large helping of alphabet soup. I was thrown into the final preparations of a NEPA appeal in the 6th Circuit and the learning curve was steep. Thankfully some great people working with the Kentucky Resource Council quickly forgave my inexperience. The Council is a non-profit organization that lobbies the state legislature to strengthen state environmental laws, assists cities with drafting ordinances, and helps coordinate related litigation. The attorneys working for and with the Council were extremely gracious with my endless questions, and they gave me an exceptional opportunity to learn how NEPA and Clean Water Act litigation work and how environmental law operates in a non-profit practice. It really helped me narrow my career choices.

-Gary Easton ('01)

Of Capital and Crescent

by Paul Boudreaux

Yes, New Orleans is different. Coming from Washington, D.C., I of course knew of New Orleans' easy-going reputation. And while I am always skeptical of simplistic stereotypes, I quickly found an unexpected example of the Crescent City attitude when I tried to figure out the time of day. Instead of the precise telephone recording I was used to in Washington ("At the tone, the time will be

10:57, pause, and 40 seconds, beep")—the phone message in New Orleans ignored the seconds entirely. After all, why do you need to know the exact time? But after I had frustratingly just missed a late-night streetcar for a second time, I checked an "official time" website—from Washington, of course—and I found that the New Orleans recording was wrong by a full three minutes!

The differing attitudes to efficiency and technology serve to echo, at least in my mind, the debate over the future course of our affluent civilization in the new century. With relative prosperity, an apparent worldwide consensus about the benefits of democratic republicanism, and the apparent triumph of global capitalism, many of the dominating conflicts of the 20th century have diminished, leaving us with the luxury of asking ourselves questions about our future. What are we going to do with this new prosperity and this new technology? In what sort of world do we wish to live?

In a recent article in *Mother Jones*, writer Bill McKibben suggests that we are coming to a crossroads. On one hand, we can simply follow the usual American pattern of ever increasing desires and complexity—we can develop more electronic gadgets, buy bigger SUVs, and trade up to even bigger houses. Or, we can follow another path. We can use our wealth to even out inequality and solve some of the most pressing global issues—such as exporting basic technology to developing nations to cut back on greenhouse gasses that generate global warming—and use our relative economic freedom to work (and drive) less. We can enjoy what we have today, now that we (or at least some of us) do not have to worry about putting food on the table tomorrow. We could spend less effort on striving for more, and enjoy more time just living "simply." Life could be sort of like the St. Charles Avenue streetcar—it is not modern, it is not very fast, and it does not have air conditioning or the Internet, but it gets you pretty close to where you want to go, you have a pleasant time getting there, and, after the trip is over, you are glad that you traveled that way.

Peter Huber might agree with some of what

McKibben has to say, but not much. A critic of traditional environmentalism, Huber argues in his latest book, *Hard Green*, that successful environmental protection is not likely to be achieved by eschewing modern technology but by embracing it. Living "simply" is not only uncomfortable, it is often potentially disastrous, Huber argues. The old, "simple" means of generating energy and handling the environment are far more destructive than complex systems. In a rejoinder to the small-is-beautiful crowd, Huber argues that if we lived "simply" and relied on resources such as wood and peat to heat our houses, we would denude the planet quite quickly. Focusing on feel-good solutions, such as recycling and using paper-instead-of-plastic, are not only ineffective, they will distract us from real solutions. By continuing to develop new technology such as growth hormones, genetic engineering, and better pesticides, Huber argues, we ensure prosperity and long-term protection of the only things that are truly scarce—parks, wildlife, and wilderness. It is not poverty that makes people green, he concludes, it is wealth. Using Huber's philosophy, one might admire the St. Charles streetcar not because it is simple, but because it relies on centrally generated fossil-fuel electricity, it conserves land, and it is happily free of much of 20th century "health and safety" regulation.

To the extent that there is a distinct New Orleans/Louisiana attitude toward the environment, both the believers in a cornucopia and the believers in scarcity might find some lessons. A cornucopian might applaud the

relaxed attitude to government regulation and a reluctance to impose constraints, although the state is hardly an avatar of the new, technological economy. And believers in scarcity decry the common economic viewpoint that the state's distinctive ecology must take a back seat to industrial development. But to the extent that there is a distinctive attitude in New Orleans toward life, both might find something to take to heart. New Orleans might offer a challenge to the reigning champion of the political and cultural wars of the 20th century—the wholesale embrace of consumerism. To many, there is no real alternative today to the you-are-what-you-consume aesthetic emanating from Burbank, Madison Avenue, and Palo Alto. If it survives, the New Orleans attitude might offer a more direct means toward happiness—instead of joy through buying, one might seek joy through being. Instead of faster megahertz, higher horsepower ratios, and more massive McMansions, happiness might be found more directly, and more lastingly, through the enjoyment of direct emotions, such as live music, good food, and warm interpersonal relations. It may be a chimera, but it is worth believing in.

Paul Boudreaux is a Visiting Professor of Law, on leave from the Environmental and Natural Resources Division of the U.S. Department of Justice. He is teaching a lecture course in Pollution Control and a seminar in Environmental Justice this Fall.

Summer Notes

I worked at the Environmental Protection Agency (EPA) Office of Regional Council in Boston this summer. I performed legal research and drafted memoranda on administrative and Indian jurisdictional issues. I was also asked to determine whether a court would give deference to the opinion of the Department of Interior concerning whether permitting authority under the National Pollution Discharge Elimination System should be delegated to the State of Maine. Other research I performed concerned whether gasoline proceeds in New Hampshire could be used to fund Smart Growth programs, and whether a town in Massachusetts could enjoin a railroad from constructing an automobile unloading facility over the town's aquifer. I was also given the opportunity to visit a Superfund site and attend meetings regarding the environmental effects of constructing an additional runway at Boston's Logan Airport. I would highly recommend the New England Region EPA to anyone interested in obtaining an environmental internship. **-Jennifer Lootens ('01)**

This past summer, I worked at the EPA Office of Enforcement and Compliance Assurance, Toxics & Pesticides Division, in Washington D.C. My work mainly focused on assisting the Agency attorneys on projects related to the Federal Insecticide Fungicide & Rodenticide Act (FIFRA) and the Comprehensive Environmental Response Compensation & Liability Act (CERCLA). My research projects included working on the sale of pesticides over the Internet and how it could be regulated and working on a CERCLA guidance document that explained the reporting requirements of air pollutants under the Act. The Office also involved its clerks in regular seminars and field trips that allowed us to gain exposure to a career in the government and to learn more about the field of environmental law. My most memorable part of the clerkship was a trip aboard the EPA research vessel into the Chesapeake Bay. Overall, the clerkship taught me a great deal about practicing environmental law and, specifically, about working in a governmental agency. **-Punam**

Parikh ('02)

Taking On the Corps

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As these stories also point out, the Corps is not uniquely at fault here. It is the servant of a Congress only too anxious to send Corps projects back home with millions of dollars attached. When Congressman Livingston of Louisiana resigned his office and the chairmanship of the House Appropriations Committee last year, local papers did not report the loss of a statesman or even his position on local or national issues; they reported (and lamented) the potential loss of Corps dollars. So anxious is the Congress to keep these federal dollars flowing that it is in no mood to let bad economic or environmental news stand in the way. Hence the exaggerations of benefits, the concealment of costs, and manipulation of data, the embarrassment of truth beneath the veneer of military correctness and propriety. The Corps lies because it has to. The agency is dependent on Congress for its appropriations and for the promotions of its Colonels and Generals as well. For the same reasons, it is largely beyond the control of any President or executive oversight. The only controls, and they have been by their nature intermittent and half-effective, have been those of judicial review.

These stories are of course not new to Louisiana, the heartland of the Army Corps and the home of its largest operating District. Indeed, the only permanent structure allowed on top of the Lower Mississippi River Levee System in this region is the massive headquarters of the Corps' New Orleans District, the largest single employer in South Louisiana. No surprise, then, that Louisiana has seen its share of major litigation against Corps projects, based largely on compliance with the National Environmental Policy Act and Section 404 of the Clean Water Act.

Two decades ago, **MICHAEL OSBORNE** (JD '60) chair of the legal advisory board of the Tulane Environmental Law Clinic, brought *South Louisiana Environmental Council v. Rush* (finding that an extraordinary 42% of the Corps projected benefits were bogus), and *Avoyelles Sportsman's League v. Marsh* (finding land clearing to be regulated under the Clean Water Act). More recent actions taken by the Clinic prompted the Corps to make a programmatic environmental assessment of "marsh management" projects in Louisiana's coastal zone, and to monitor the effects of these projects as they proceed.

Now, a new crop of private environmental lawyers is rising to challenge the Corps and leading the pack are several Tulane Law School graduates. **HUGH PENN** (LLM '98) and **MICHAEL ROLLAND** (LLM '94) first took

on the Corps over its proposed re-channelization of the Pearl River, a navigation project first authorized in 1955. Literally a canal to nowhere, the project was an economic bust from the outset and proved to be so useless the Corps itself shut it down. Gradually, the natural systems of the Pearl River swamp recovered, water quality improved, wildlife grew abundant again, and a thriving tourist industry developed around tour boats, hunting and fishing. A large National Wildlife Refuge was purchased. At which point, the city of Bogalusa and its champion, Representative Bob Livingston, known as "Budget Bob" for his harsh treatment of public spending on the Appropriations Committee, (except of course when it came to sending Corps money back home), revived its ambition to become a "port city." The Corps obliged with a new environmental impact statement (finding the usual absence of harm) and a new benefit-to-cost ratio that was simply delusional, projecting increased tonnage from air.

To make a long story short, the Corps had let out the dredging contract and the aptly-named "Butcher" was steaming up the Pearl to straighten out this River once and for all when a preliminary injunction was issued, stopping the dredging for that season.

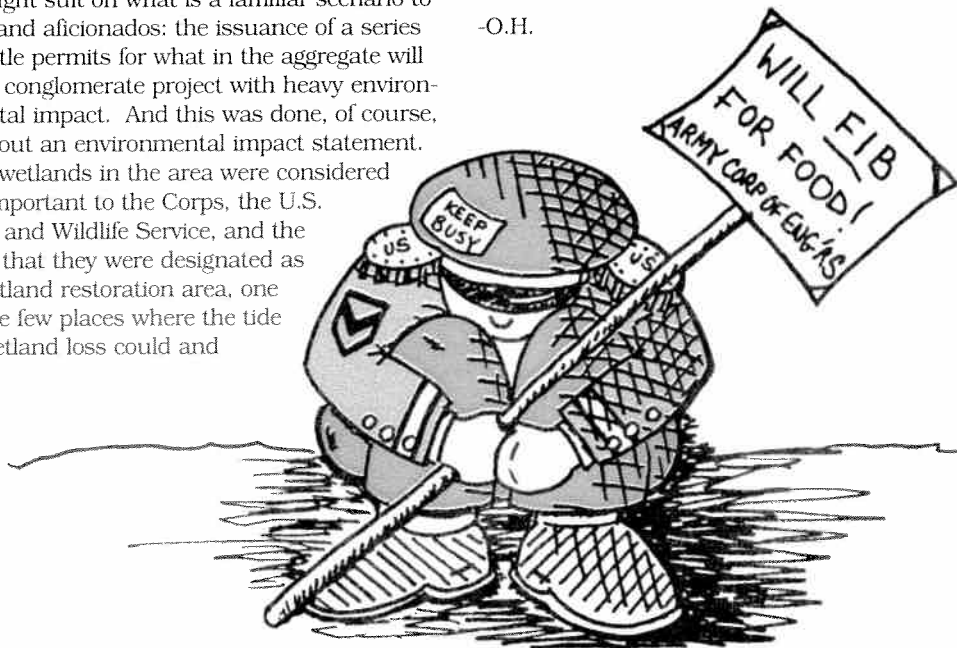
Another pair of environmental attorneys has taken up the challenge of taking on the Corps, in what could be one of the largest port projects on the Gulf. In a case styled *Gulf Coast Mariners Association, et al. v. the U.S. Army Corps of Engineers*, **JOEL WALTZER** (Tulane Law Clinic Fellow '89-'90) and **YARROW ETHEREDGE** (JD '99) have brought suit on what is a familiar scenario to wetland aficionados: the issuance of a series of little permits for what in the aggregate will be a conglomerate project with heavy environmental impact. And this was done, of course, without an environmental impact statement. The wetlands in the area were considered so important to the Corps, the U.S. Fish and Wildlife Service, and the EPA that they were designated as a wetland restoration area, one of the few places where the tide of wetland loss could and

would be reversed. Instead, we have a series of permits for oil and gas drilling services, canals, pods, pipelines and the familiar complex of activity that has all but destroyed Lafourche wetlands to the north. **WALTZER** and **ETHEREDGE** are blowing the whistle. Stay tuned.

The Lafourche case will receive important precedent from yet another Corps-Won't-Do-NEPA lawsuit, co-counseled by yet another Tulane graduate, **ESTHER BOYKIN** (LLM '94), attorney for the Earthjustice Legal Defense Fund in New Orleans. *Friends of the Earth, et al. v. Army Corps of Engineers* concerned the proliferation of casinos along the Mississippi gulf coast, all under Corps permit for their placement in wetlands and waters of the United States, none with an impact statement, much less one that addressed the cumulative impacts of nearly a dozen major casinos and more on the way. This case went to verdict, impact statements were required, and the Corps will now face the hard job of either telling or disguising some bad environmental news to an audience hugely supportive of, and dependent on, these casinos.

Litigation will not "reform the Corps," in part because it is hard to reform any program with this many free federal zeros after the dollar sign, and in part because one would have to reform the Congress as well, and that is apparently beyond the reach of any mere mortal. But this litigation plays its role in keeping the game more honest than it otherwise would be, and more in compliance with those environmental policies and requirements that are, after all, also law.

-O.H.



New Studies Question...

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"As a government attorney or environmental lawyer, you communicate with federal judges only through written briefs. You probably even avoid casual conversations with the judges you practice before, out of concern over the possible appearance of inappropriate ex-parte contact. Meanwhile, back at the dude ranch, your adversaries are wining and dining the same judges and carefully dissecting your arguments during fly fishing expeditions and leisurely horse back rides through Yellowstone National Park."

-from *Nothing for Free: How Private Judicial Seminars are Undermining Environmental Protections and Breaking the Public's Trust: A study by the Community Rights Council* www.communityrights.org

NOTHING FOR FREE began with an examination of the financial disclosure reports of federal judges for the years 1992-1997. The records were produced through a Freedom of Information Act request made by Tulane Professor Oliver Houck. The Community Rights Council's subsequent examination identified more than 5,800 all-expenses-paid trips taken by 1,030 judges. A large number of these trips were for free "judicial education" seminars conducted by conservative organizations, were funded by corporations and corporate foundations, and featured an agenda uniformly critical of federal environmental law and policy.

The three organizations hosting the most seminars were the Law and Economics Center at George Mason University, the Foundation for Research on Economics and the Environment (FREE), and the Liberty Fund, with respectively, 246, 194 and 100 trips reported. The last years of the period saw the number of trips increasing to an average of 86 trips per year. "With about 800 active judges at any given time," the study observes, "this means that about 10% of the federal judiciary takes a Big Three trip each year."

Anyone is entitled to trips, of course. The trips take on another hue, however, when one considers the agenda, and that this agenda is being funded by corporate interests, for federal judges, who will some day, with luck, rule on their issues.

FREE flies about 50 judges a year to Montana to attend 5-6 day seminars at resorts such as the Gallatin Gateway Inn and dude ranches like the Elk Creek Ranch. FREE pays for all of a judge's expenses, including tuition, room, board, travel and recreational activities. Judges spend 3 to 5 hours each day listening in classes; the rest of the day is devoted to fly-fishing expeditions, horseback rides and cocktail hours. FREE receives funding from such corporations as Amoco, Shell, GE, Texaco, Temple-Inland Burlington Resources and Koch Oil, and conservative philanthropists such as Richard Mellon Scaife. These funders also participate in and bankroll federal court litigation, so that their issues have the advantage of appearing before judges educated at FREE seminars.

FREE seminars deliver two primary messages to federal judges. First, they argue that existing federal environmental laws are inefficient and should be repealed or struck down in favor of the free market, which

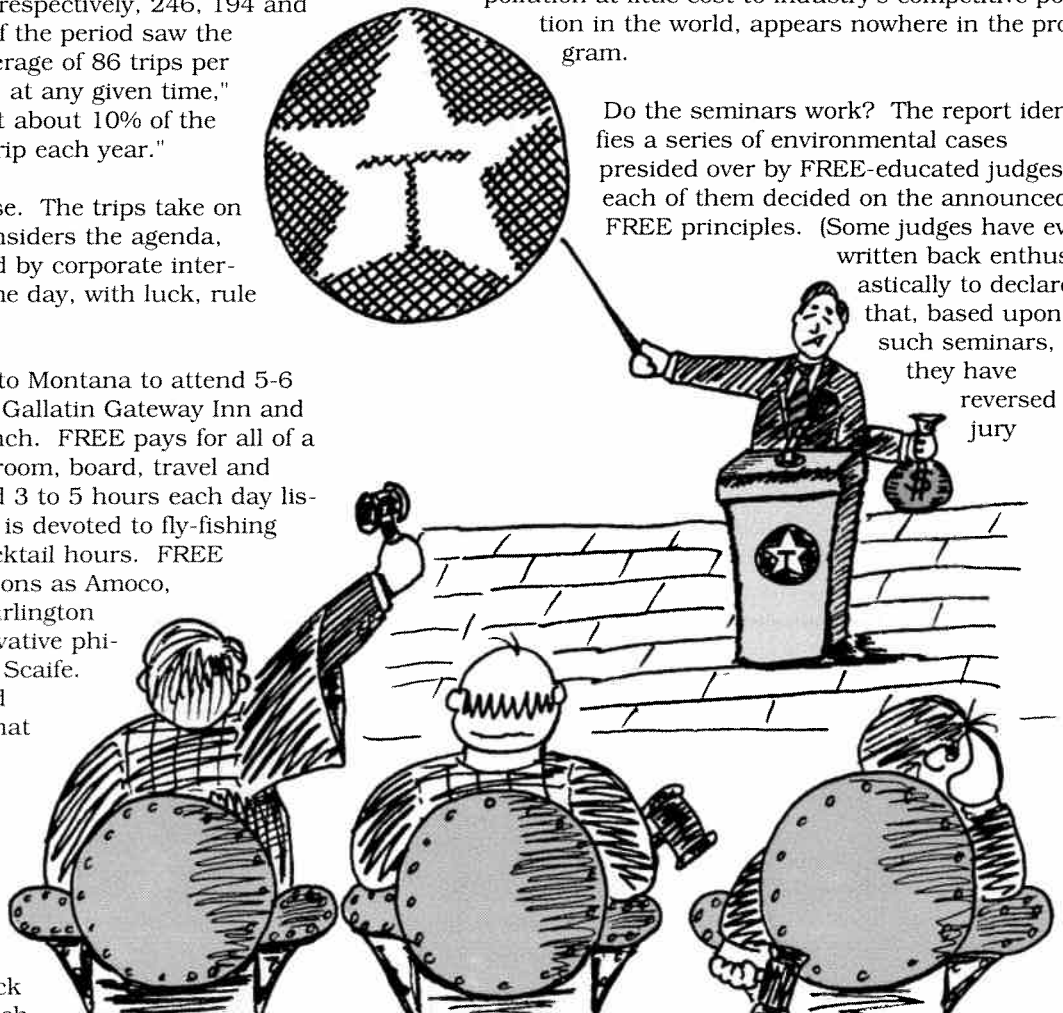
will produce a more "optimal" amount of pollution. A Desk Reference for Federal Judges explains:

"The first step is to realize that an external cost is not simply a cost produced by the polluter and borne by the victim. In almost all cases the cost is the result of decisions by both parties. I would not be coughing if your steel mill were not pouring out sulfur dioxide. But your steel mill would do no damage if I (and other people) did not happen to live downwind from it. It is the joint decision - yours to pollute and mine to live where you are polluting -- that produces the cost."

FREE seminars also encourage judges to reinterpret the Constitution to repeal or limit existing environmental laws. In the words of one FREE Trustee, the most frequent lecturer to judges at FREE seminars: "My fear is that the Reagan revolution will come to nothing as these judges sit on their hands in the name of a simplistic theory of judicial restraint."

It is not only the one-sidedness of the messages, but that of the messengers which are exposed in the study. FREE faculty, for example, include several of the most conservative academics and attorneys in America, some open in their call for "unabashed activism" by the judiciary in striking down environmental laws. Additional faculty include the Vice President for the Temple-Inland Forest Products Corporation and the former Chief Executive Officer of Texaco, Inc., who calls environmental law "a dreadful wrong being visited on the American people" and a system that has "just not worked". Considerable evidence that, to the contrary, laws such as the Clean Air Act and Clean Water Act have brought about dramatic reductions in pollution at little cost to industry's competitive position in the world, appears nowhere in the program.

Do the seminars work? The report identifies a series of environmental cases presided over by FREE-educated judges, each of them decided on the announced FREE principles. (Some judges have even written back enthusiastically to declare that, based upon such seminars, they have reversed jury



awards in environmental and toxic tort cases).

Canvassing environmental cases over the past decade, the study finds:

▶ in nine of the decade's most dramatic departures from established precedent by lower federal courts, the judge striking down the environmental protection has attended at least one FREE seminar;

▶ in five of these cases, the judge attended the FREE seminar while the case was pending;

▶ in at least three of these cases, the judge ruled in favor of a litigant bankrolled by FREE's sponsors; and

▶ in *Sweet Home v. Babbitt*, one of the

"Elections to select state judges represent a major new battlefield in the political warfare over environmental regulatory policy. But the significance of these electoral contests to environmental concerns has been largely invisible to the general public and to professionals in the environmental field."

-from *Changing the Rules by Changing the Players; the Environmental Issue in State Judicial Elections*: a study by the Environmental Policy Project, Georgetown Law Center
www.envpolicy.org

CHANGING THE RULES addresses the recent and increasingly acute problem of corporate influence over judicial elections. Once again, environmental issues emerge in the bull's-eye of the corporate donors to judicial elections and, once again, with marked impact on the adjudication of specific cases and on the appearance of impartial justice.

The Georgetown study is a second act to the well-publicized influence of the Louisiana Association of Business and Industry and the New Orleans Chamber of Commerce on elections to the Louisiana Supreme Court, presented in the 1999 *Frontline* documentary "Justice for Sale." A swing in the court, openly won by petrochemical and other industry support, led to the prompt reversal of an opinion that had ruled against industry and in favor of the State Attorney General. The following election cycle saw the re-election of the Chief Justice who gained the support of the Louisiana petrochemical industry and business organizations by issuing rules restricting law clinics in the state from representing citizen groups in, in effect, environmental litigation. As a representative of the New Orleans Chamber of Commerce explained: these environmental cases were "bad for the state."

This study expands on the experience in Louisiana, Pennsylvania, and Texas documented by *Frontline*. It identifies the

decade's most important environmental rulings, a judge of the D.C. Circuit ruled to uphold habitat protection, attended a FREE seminar, came back, switched his vote, and wrote an opinion striking down a central component of the Endangered Species Act.

As Abner Mikva, the former Chief Judge of the D.C. Circuit says in the forward to NOTHING FOR FREE:

"It may be a coincidence that the judges who attend these meetings usually come down on the same side of important policy questions as the funders who finance these meetings . . . But I doubt

Institute for Legal Reform, a legal arm of the U.S. Chamber of Commerce, as launching a ten million dollar campaign to support the election of judges with "strong pro-business backgrounds" in Alabama, Illinois, Michigan, Mississippi and Ohio. It describes a little-known Oklahoma-based organization with close ties to Koch Industries, a large conglomerate with oil, chemical and agricultural interests and with major recent problems with environmental law compliance, formed to promote the election of judges sympathetic to business interests in environmental cases. It identifies new "rating" schemes and evaluations for the pro- or anti-business attitudes of sitting judges, using the evaluations as the basis for funding and support, or opposition, in election campaigns.

As in the judicial education study described above, CHANGING THE RULES also documents an impressive record of success in affecting state litigation. This includes a successful attack by Idaho resource industries on a sitting Supreme Court Justice for having written an opinion recognizing federal "reserved" water rights in national wilderness areas, and a similar campaign against a sitting Ohio Justice who voted to uphold state and local environmental requirements. Similar events have occurred in Michigan, where business interests have succeeded in "transforming" the Supreme Court and "unraveling" the states environmental protections, as well as

it. More importantly, any citizen who reads about judges attending such fancy meetings under such questionable sponsorship will doubt it even more."

Federal judges can, and in response to this study do, maintain that they can differentiate between truth and propaganda, but facts and truth are often in the eye of the beholder, and there is no one on earth who is immune to good advertising. One can be sure that those interests who are financing these seminars believe deeply that they are influencing judicial opinion ... or they would not bother to finance them. That fact alone is reason enough to stop the game.

in Texas, Alabama, and of course, Louisiana.

What is happening here is not new. America has always had elections, and the influence of business and other special interests, including environmental interests, in the give and take of electoral politics is a healthy ingredient in our political lives. More recently, however, we have seen the onrush of money into elections of the executive and legislative branches to the extent that the American people have come to question the meaning of democracy itself. Throughout, the judiciary has remained above this manner of fray, and has enjoyed a reputation for impartiality as a result.

What is new is the recent influx of megabucks, many millions per race, in judicial elections, threatening to make individual judges the same spokesmen-for-Big Oil or Big Labor or Whomever-Financed-Their-Campaigns that we associate with members of Congress, and for exactly the same reasons.

In a recent poll of Louisiana citizens reported in *The Times-Picayune*, the polling service asked whether the interviewee believed that the Louisiana courts distributed justice in a fair and impartial way. The first reaction of most of the respondents was said to have been sudden laughter.

-O.H.

The issue of undue influence on the judiciary is growing. In its lead editorial of September 15, *The New York Times* opined:

"The need for reform was underscored a week ago when a federal district judge in Manhattan, Jed Rakoff, denied a motion to recuse himself from further involvement in a lawsuit seeking damages from Texaco for harming the rainforest in Ecuador. Lawyers for the plaintiffs - indigenous people who live in the rainforest - filed the recusal motion upon learning of Judge Rakoff's ill-advised participation in an expenses-paid seminar on environmental issues that had been held at a Montana ranch by a foundation receiving sizable donations from Texaco. One of the lecturers was Alfred DeCrane, Jr., the retired chairman and chief executive officer of Texaco, who ran the company when it operated in Ecuador. In his ruling, Judge Rakoff argued that his acceptance of the travel gift was within existing rules, a hair-splitting explanation that does not remove qualms about his judgment or impartiality."

Perspectives on the New EPA Title VI Guidance:

In a long-awaited step, the U.S. Environmental Protection Agency this summer published draft guidance documents on compliance with Title VI of the Civil Rights Act of 1964. An important legal underpinning for the "Environmental Justice" movement, Title VI and its implementing EPA regulations prohibit the recipients of federal

funds, such as most state environmental agencies, from discriminating on the basis of race, color, or national origin. The Tulane Environmental Law Clinic has been at the forefront of efforts to enforce Title VI. The Clinic has filed numerous complaints with the EPA on behalf of Louisiana citizens who believe that their communities have borne a

discriminatory brunt of the state's industry and associated environmental risks. Four individuals, who represent different aspects of the environmental justice movement, were asked to comment on the new EPA guidance, explaining what they think the guidance means for the future of environmental justice.

Stop Eviscerating Civil Rights

by **Luke Cole**

Throw it out. That is my simple advice to EPA on its new Title VI guidance. With this new assault on Title VI, the Clinton EPA has joined conservative federal courts and right-wing activists in trying to eviscerate civil rights protections for people of color.

The new guidance is a significant retreat from even the paltry protections proposed by EPA's 1998 Interim Guidance. EPA ignored almost every recommendation made by community groups, environmental justice advocates, complainant communities, and EPA's National Environmental Justice Advisory Council.

EPA starts out on the wrong foot on page one, stating that the "guidance strikes a fair and reasonable balance between EPA's strong commitment to civil rights enforcement and the practical aspects of operating permitting programs." This balancing act has no place in anti-discrimination law.

To come up with this guidance, EPA relied heavily on input from "stakeholders" in industry and state and local governments. Inviting such "stakeholders" - the very objects of civil rights complaints as well as the industries accused of poisoning communities of color - to hammer out civil rights policy is analogous to convening meetings of the KKK and segre-

gationist southern governors to come up with an "acceptable" civil rights policy in 1960. The process and product in 2000 is in no way less offensive.

With such "stakeholder" involvement, it is not surprising that in the new guidance, at every step, EPA has made policy decisions that hurt civil rights complainants and help civil rights violators. A few examples:

› The guidance goes far beyond EPA's Title VI regulations in limiting who can file a complaint.

› The guidance promises EPA will reject claims against pollution reducing permits, even though for years advocates have pointed out to EPA that such permits can still have discriminatory impact. For example, a unique facility placed in an African American neighborhood will still have a discriminatory impact on the basis of race even if its emissions are cut from 100 to 75 tons per year of toxic air pollution.

› The guidance promises EPA will reject claims against discriminatory impacts "outside the jurisdiction" of an agency, even if the agency's permit action is the proximate cause of the discrimination.

› The guidance promises to accept broad "justification" from a violator for the discriminatory impact found, including beliefs that a

permitted facility will bring economic benefit to the host community. This majoritarian notion -- "it is good for the community as a whole, so your rights can be sacrificed" -- is fundamentally at odds with the concept of civil rights in general and Title VI in particular.

› The guidance does not stay permits during the investigation, guaranteeing ongoing discrimination. There are dozens of cases where communities, which have filed Title VI complaints, are languishing at the hands of toxic polluters, abandoned by the EPA. In almost every one of these cases, the toxic projects went forward, causing adverse impacts on communities of color.

Only a fresh approach, unburdened by fealty to "stakeholders" hostile to civil rights, can resuscitate EPA's dormant civil rights enforcement. Some have called the guidance a "paper tiger," but it's more like a house cat that has been put to sleep. It's time to throw this dead cat in the trash.

Luke Cole represents civil rights complainants from Alabama to California, and is director of California Rural Legal Assistance Foundation's Center on Race, Poverty & the Environment in San Francisco. He currently serves as chair of the Enforcement Subcommittee of EPA's National Environmental Justice Advisory Council, and also served on EPA's Title VI Implementing Committee.

EPA Draft Title VI Guidance Misses Mark

by **Robert D. Bullard**

All communities are not created equal. If a community happens to be poor, powerless, or inhabited largely by people of color, it receives less protection than affluent white suburbs.

Title VI came into being when Congress enacted the Civil Rights Act of 1964; Title VI prohibits recipients of federal financial assistance from discriminating against persons because of their race, color, or national origin. This law applies not only to the U.S. EPA, established six years after Title VI in 1970, but also to all fifty states. EPA first issued Title VI implementing regulations in 1973 and amended them in 1984.

Beginning in 1992, communities began filing Title VI complaints with EPA. In 1994 President Clinton signed Environmental Justice Executive Order 12898, calling for agencies to enact EJ policies. By 1997, over two-dozen Title VI complaints had been filed, prompting EPA to begin drafting Title VI guidance. During this

period EPA also established a national advisory committee, under the Federal Advisory Committee Act (FACA), to study the problem. In June 2000, after eight years and 45 complaints (including the original five complaints filed in the early 1990s), EPA issued its Draft (Revised) Title VI Guidance.

The draft guidance can be described in two words: "total disaster." The Interim National Black Economic and Environmental Justice Coordinating Committee, a network of over 300 black organizations, says the draft guidance fails to recognize that the concentration of waste sites and toxic facilities in communities of color is a form of racial discrimination that violates the civil rights of people of color who live in these communities; it creates a difficult and highly technical standard of "proof" biased in favor of state environmental protection agencies and the industries they regulate; it fails to recognize that any justification that can be offered

by a state environmental agency must be limited to the substantial, legitimate interest of that agency; and it excludes communities of color from the appeals process, yet allows states several avenues of appeal, including to an administrative judge.

Lay and legal environmental justice and civil rights advocates alike echo this sentiment. Jerome Balter, an attorney with Public Interest Law Center of Philadelphia and attorney for the plaintiffs in the Chester, Pennsylvania, Title VI lawsuit—a case that made its way to the U.S. Supreme Court—says the EPA should withdraw the draft guidance. Balter fears it would be used as an "incorrect legal basis for determining compliance or violation of environmental civil rights and would compound the error by using uncertain data and uncertain science."

By failing to recognize that African Americans and communities of color have been illegally
Continued on page 9

New EPA Guidance Closer, But Still No Cigar

by Keith McCoy

First and foremost, we are pleased to see that the revised draft guidance is based on principles with which we agree: 1) All persons are entitled to a safe and healthful environment; 2) Strong civil rights enforcement is essential; and 3) Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development. Does this mean that the draft guidance is perfect and we are in total agreement with EPA? Not quite.

Unfortunately, the revised draft guidance does not provide the predictability and certainty that is crucial to any effective environmental-permitting process. From a business perspective, the most fundamental flaw in the revised draft guidance is the lack of a predictable process for the Office of Civil Rights (OCR) to use in determining which "disparate impacts" actually violate Title VI and which do not. OCR's limited investigative resources should not focus on individual permits but, instead, on state-permitting programs. Further, the types of permit enforcement actions that may be able to support a Title VI investigation should be limited to those that authorize a significant net increase in emissions of concern.

Additionally, the scope of impact should be

narrowed to those that are actually within the legal authority of the permitting agency, and clarify how OCR will attempt to identify the "affected" population. Finally, there should be some acknowledgement as to the difficulties in defining an "appropriate" comparison population. EPA's statements about selecting a comparison population are too general and do not reflect the complexities involved in selecting an appropriate comparison population. A comparison population should have land-use patterns similar to those of the affected population. Further, it should have a similar balance among rural, urban and suburban areas, with a similar range of residential, commercial and industrial activities.

The preceding problems, presented in a vacuum, do not pose that great a concern and, in our opinion, can be fixed. However, what is really troubling about the revised draft guidance is its underlying tilt toward encouragement for the filing of Title VI complaints in the hope of bringing pressure upon the recipient and the permittee. In effect, this tilt paves the way for an "informal resolution" in which one of them makes various concessions simply to bring the dispute to a close. This very unfortunate set of "incentives" results from several aspects of EPA's process, including:

- 1) the lack of any substantive threshold for filing a complaint (e.g., specific description of the alleged discrimination);
- 2) the ability of persons without a genuine stake in the community to file complaints;
- 3) the lack of predictability as to which adverse disparate impacts amount to violations of Title VI;
- 4) the decision not to grant "due weight" to state permitting decisions, except in some situations where area-specific agreements have been reached;
- 5) the very narrow approach to justification in the draft guidance; and
- 6) EPA's pointed reminder that complainants may seek and recipients may agree to implement broader measures that are outside those matters ordinarily considered in the permitting process.

The business community is committed to working with EPA, states and host communities to resolve environmental justice concerns. It is our hope that eventually, the revised draft guidance will reflect our concerns, and lead to a fair and workable system.

Keith McCoy is Director of Environmental Quality at the National Association of Manufacturers (NAM), and Executive Director of the Business Network for Environmental Justice.

Civil Rights and Environmental Justice Under Attack

by Damu Smith

A national campaign by right wing, conservative and misguided forces is threatening the civil rights and equal protection laws and policies that were created to achieve environmental justice for all. Groups such as the U.S. Chamber of Commerce, Washington Legal Foundation, some members of Congress, and certain members of the National Black Chamber of Commerce are working to undermine enforcement of federal civil rights law.

Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color and national origin by recipients of federal financial assistance, would help to end the racial disparities in environmental protection that result in people of color being targeted for toxic and radioactive waste sites and hazardous industries. The disproportionate siting of polluting facilities in communities of color means that residents of these areas are more at risk for contracting serious illnesses associated with severe toxic exposure.

Lower property values, frequent industrial accidents, the disruption of cultural mores and religious practices dependent on interaction with

the natural environment, increased poverty, and the outright destruction and elimination of whole communities (such as three black communities once near toxic industries in Louisiana), are the additional tragic consequences of environmental racism and injustice.

The siting of polluting industries disproportionately near communities of color is in significant measure the result of a pattern of racially discriminatory siting decisions by state environmental regulatory agencies who receive federal funds to administer certain provisions of federal environmental protection laws (such as Title V, the permitting section of the Clean Air Act). It is the contention of environmental justice groups that when state agencies engage in this practice they violate Title VI of the 1964 Civil Rights Act.

On its face, the concentration of polluting industries in communities of color due to discriminatory siting decisions should constitute a violation of civil rights law. But according to the Environmental Protection Agency, that is not the case. Recent rules promulgated by the EPA's Office of Civil Rights significantly weaken environmental protections by:

* Failing to recognize that the disproportionate

concentration of waste sites and other noxious facilities in communities of color is a form of racial discrimination that violates civil rights and the President's Executive Order on Environmental Justice (1994).

* Requiring a difficult and highly technical burden of proof on the health effects of toxic pollution that is biased in favor of the siting of waste sites and toxic industries in communities of people of color. The EPA would require communities near polluting facilities to scientifically prove that the facility's emissions cause illnesses to residents. In most instances this is an impossible standard to meet.

* Allowing the mere promise of economic benefits of a toxic industry, which often never materialize for many of our most polluted communities, to be used as a justification for dismissing a civil rights complaint; and

* Denying people who file civil rights complaints the opportunity to appeal EPA decisions, while state environmental agencies can appeal EPA decisions and are given several options for negotiating with EPA on resolving complaints.

In response to this threat against civil rights and equal environmental protection we need a national movement to raise voices of conscience from all communities against this outrage.

targeted for toxic industries, the EPA has made a fundamental error and abandons established civil rights law—which enacted rights won in the streets, jails, and courts. The federal EPA should be in the business of protecting everyone and enforcing the law without regard to race, color, or national origin—rather than rais-

ing the legal bar and making it next to impossible to prove discrimination.

Robert D. Bullard is director of the Environmental Justice Resource Center at Clark Atlanta University and author of *Dumping in Dixie: Race, Class and Environmental Quality* (1990).

Damu Smith works as Toxic Director in the Washington D.C. office of Greenpeace. He has been with the organization since 1991, and serves as spokesperson and representative for Greenpeace while working in the south as a toxic specialist and campaigner.

Environmental Clinic Wins Waste Case ... and ABA Award

Nearly two years ago, the state Department of Natural Resources (DNR) issued a permit to Growth Resources Inc. to operate two commercial underground injection wells for the disposal of oilfield waste next to Bayou Black in Terrebonne Parish. The citizens of the town of Gibson and the parish government feared that an accidental spill of the oilfield waste could contaminate the bayou, a frequent drinking water supply for approximately 40,000 people.

At the request of local citizens and the Louisiana Environmental Action Network (LEAN), Clinic students reviewed the permit application, filed written comments, and testified at a public hearing in opposition to the proposed permit. DNR issued the permit nonetheless, and the Clinic filed suit on behalf of the Gibson residents, LEAN and the Terrebonne Parish Consolidated Waterworks District. After extensive efforts to negotiate a settlement failed, law clinic students Evah Pottmeyer and Mark Renken prepared briefs setting forth the merits of the challenge, and

argued the case in district court in Baton Rouge. Coincidentally, Mark Renken's oral argument - on July 10, 2000 - occurred on the same day that the American Bar Association, in a national ceremony in New York City, conferred upon the Clinic an award for "Distinguished Achievement in Environmental Law and Policy."

State District Court Judge Michael Caldwell ordered that the permit be revoked because the DNR violated the plaintiffs' constitutional due process rights by failing to make vital information available to citizens prior to the issuance of the permit. The court further ruled that the DNR violated state constitutional requirements that mandate that the DNR give the public written reasons for issuing the permit, based on a long-standing interpretation of the Louisiana Constitution.

In 1984 the Louisiana Supreme Court issued a decision, commonly referred to as *Saxe Ourselves*, requiring state agencies responsible for environmental regulation to perform an analysis similar to that required by the

National Environmental Policy Act prior to the issuance of state permits. Subsequent Louisiana case law has reaffirmed this mandate, as well as the requirement that agencies fully explain the basis for their decisions when issuing permits. DNR failed to make this *Saxe Ourselves* analysis available to citizens prior to the issuance of the permit, and failed to provide the requisite written reasons for its approval of the Growth Resources Inc. permit. Clinic attorney Elizabeth Teel, who supervised the students during the litigation, commented "it is just amazing that this analysis has been the law of the land here for more than fifteen years, yet our state government still regularly fails to comply." The DNR has announced that it does not intend to appeal the court's ruling.

The spokesman for the Gibson residents hailed the ruling as a "great victory." The Terrebonne Parish Waterworks approved a Resolution calling the Environmental Law Clinic's efforts on their behalf "outstanding and commendable."

Going Forth and Doing Green: LLMs in Action

Tulane's Masters program in Energy and Environmental Law, now in its 15th year, has conferred advanced degrees on nearly one hundred and fifty U.S. and international lawyers . . . from whom we hear from time to time, with some remarkable stories of commitment and success. In this edition we summarize a little of the activity of our international LLM graduates, some of whom have already gone on to make a huge difference in their home countries.

Andres Tissera, '99, Argentina:

"I am an adjunct professor at the Catholic University of Cordoba, in mining and environmental law. I am creating, with some people that I worked with at the Secretary of Environment, an environmental consulting firm called "Servicios Ambientales del Interior S.A." The staff includes a biologist, an architect, engineers, accountants and others who will be hired for specific cases. ... I am also advising some NGOs and we have a couple of lawsuits alleging (among other claims) that the Environmental Impact Statements that are required by law were not made. For example: a new highway in the Province of Cordoba."

Edna Rosario-Munoz, '95, Puerto Rico:

"Things down here are hectic with the Vieques issues and the corruption cases that I am handling. I am basically doing white collar work in the criminal division, but I handle all the environmental cases investigated in this District. This office has been very successful

in prosecuting endangered species violations, such as the green sea and hawksbill turtles. We have been able to obtain sentences of imprisonment in most of these cases. This office has also prosecuted Clean Water Act violations successfully, most notably the Royal Caribbean Cruise Lines case involving the dumping of oil at sea, where the fines totaled well over \$500,000. . . I have discovered that my love for environmental work is equal to my love for public corruption cases."

Luis Vera-Morales, '93:

"I was officially contacted by the so called "Transition Team," that is the [incoming President of Mexico] Fox team that will "reinvent" the government. There are 15 ten-person teams, one per area of the administration (social security, finance, defense, commerce, etc.); the head of each of the teams is expected to be the new minister of the corresponding area. I was invited by the head of the Environmental Team whom I met while litigating the Cozumel Pier case. Each member of the Team is responsible for a specific issue. I am the coordinator of the Legal area. My duty is to support all the other areas, diagnose the status of the programs and actions of SEMARNAP [the environmental agency] and propose all legal changes (Constitutional, in laws, regs, norms, etc.), necessary to improve the efficiency of the agency. I am also in charge of the changes in structure within the agency and with regard to other agencies. Finally, I have to develop and implement a specific project of

the next administration, access to environmental justice for the community. I am extremely happy, and overloaded too. This is an opportunity that I will not let go. ... On the other hand the Firm is at full steam. I am doing the EIS regs for Mexico City and the Environmental Laws for three states, Nayarit, Nuevo Leon and Sonora and have a lot of interesting, first rate work."

Victor Valdovinos, Paraguay:

"In July 1999, one month after I returned to Paraguay, I received an offer to work with the Instituto de Derecho Ambiental - IDEA, a non-profit environmental law institute. One of my first duties was to participate in an initiative of the environmental community to create the environmental authority of Paraguay. The Environmental Committee of the Paraguayan House of Representatives requested the legal advice of the Institute, because there were two proposals on the same issue, and I was the person designated to work with the Committee. The law was passed May 29th ... Meanwhile the Institute was hired by the GTZ, the German Cooperation Agency, to advise the authority in the reformulation of the regulations for the environmental impact assessment process in Paraguay. The Institute designated me to work with the authority, and we drafted a proposal that is still being discussed within the public sector. The Institute also has a conservation program that works with private

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Tulane Environmental Law Journal

International Environmental Law Symposium

Featured Article:

Volume 14

The Tulane Environmental Law Journal, currently in its fourteenth year of publication, has evolved into a biannual publication devoted to important developments in environmental law and policy. Recent issues have been dedicated to emerging issues in CERCLA, the law of biological diversity, environmental justice, toxic tort litigation, fisheries conservation and management, the environmental implications of the North American Free Trade Agreement, and international environmental law.

Issue 1 of Volume 14 will feature the following articles as well as case notes and recent developments:

- Andrew Morriss & Roger Meiners, The New Feudalism in Property Law: The Destructive Role of Land-Use Planning.
- Gershon Cohen, Mixing Zones: Diluting Pollution Under the Clean Water Act.
- Patricia Birnie, Fears That The International Whaling Commission Would "Get Into The Hands of Scientists" and Other Practical Problems Concerning Conservation of Whales.
- Rose Kob, Stopping Sprawl and Starting Fresh: The Promise of Eco-Development and Environmental Democracy.
- Paul Boudreaux, Looking the Monster in the Eye: Some Tough Questions for the Anti-Sprawl Movement.

The Journal staff is pleased to highlight our upcoming issue featuring a symposium entitled "Emerging Issues in Energy and The Environment." Professor Kirsten Engel and the Journal editorial staff have assembled a number of leading environmental scholars to address :

- (1) The environmental legacy of nuclear power. Present issues with respect to nuclear power (e.g. stranded costs) and the future of nuclear power as a viable source of energy.
- (2) The environmental legacy and future of fossil fuels. This topic will include discussion on the past regulation of electric utilities, current debate on the EPA's New Source Review Program (e.g. the routine maintenance exception), the success/failure of the Clean Air Act's Acid Rain Program, and most importantly, the current debate surrounding electric utility deregulation.
- (3) The past and future of alternative energy use. Including discussion of the past success of renewable energy sources, their future as a marketable energy source, and the impact deregulating electric utilities will have on their future viability.

You can ensure receipt of your copy by subscribing to the Journal today. A one-year's subscription to the Journal is available at the extremely reasonable price of \$20.00. To begin receiving the Journal, starting with Issue 1 of Volume 13, please e-mail: LBencel@law.tulane.edu, or call the Journal office at (504) 865-5309. You will be billed later.

LLMs Continued From Page 10

landowners; supported by the Nature Conservancy, and my responsibilities within the program were to research our civil legislation and develop mechanisms of land conservation for private landowners. We finished the research last April with a publication recommending the acquisition of servitudes or easements. We then held various workshops all around the country in order to publicize a private land conservation initiative, and have had our first success with the implementation of the first two easements totaling around 21,000 acres under conservation. ... Last June I was hired by the National University of Asunción, the University where I received my law degree, to teach environmental policy and legislation, and since then I have been teaching two classes and I am really enjoying it."

Andres Rafael Carreno, '97, Venezuela:

"I have been working since my return from New Orleans in the Supreme Court. Currently, I am employed in the constitutional law cham-

ber of the Supreme Tribunal, and my job mainly involves the drafting of judicial decisions concerning *amparo*. As of today there are a few decisions concerning environmental protection and the concern mainly involves human rights violations. In reference to the practice of environmental law, I am involved in the drafting of a series of environmental regulations for the parish where I live. The project will be presented for consideration and, after that, who knows? Beyond all this is an educational booklet in whose preparation and drafting I was closely involved. So as to the present day, my professional practice has been restricted to public law, and there is still a long way to go in environmental protection in Venezuela."

Zelimir Grzancic, '97, Croatia:

"Here is a brief list of my recent enviro career:
- Head of the Environmental Protection Section of the Regional Planning and Environmental Protection Department -

a branch of the Primorsko-Goranska County government, and chief coordinator and co-author of the Primorsko-Goranska County Environmental Protection Program and Action Plan

- advisor in drafting the National Environmental Protection Program and Strategy of the Republic of Croatia
- member of the "Ucka Mountain Nature Park" Administering Board
- member of the steering committee of the "Karst Biodiversity Preservation" project, initiated and sponsored by GEF/World Bank.

As for my personal life - married since November '97, still no kids (to be corrected soon), monster dog (HAPPY), a new hobby - nature photography (proud owner of a cheap Russian camera), still playing music, still supporting tobacco industry, still a regular at our soccer stadium (my team is FC "Rijeka," best soccer fans ever - the famous "Armada"), and still missing some great people and moments from the States."

Recent Publications by Environmental Law Faculty at Tulane

Adam Babich:

Dodging a Bullet: Lessons from the Failed Hazardous Substance Recycling Rider to the Omnibus Appropriations Bill, 29 *Envl. L. Rep.* (Envl. L. Inst.) 10131 (1999).

Paul Boudreaux:

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Oliver Houck:

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Jerry Speir:

MANAGING A BETTER ENVIRONMENT: OPPORTUNITIES AND OBSTACLES FOR ISO 14001 IN PUBLIC POLICY AND COMMERCE (with Jason Morrison, Katherine Kao Cushing, and Zöe Day) (Pacific Institute 2000).

Editor, *CUBAN ENVIRONMENTAL LAW: THE FRAMEWORK ENVIRONMENTAL LAW AND INDEX OF CUBAN ENVIRONMENTAL LEGISLATION* (Tulane 1999).

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